



ADVISORY COUNCIL ON HISTORIC PRESERVATION

Exemption from Historic Preservation Review for Electric Vehicle Supply Equipment

AGENCY: Advisory Council on Historic Preservation.

ACTION: Approval of exemption regarding electric vehicle supply equipment.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) has approved an exemption that would relieve federal agencies from the historic preservation review requirements under the National Historic Preservation Act regarding the effects of the installation of certain electric vehicle supply equipment (EVSE) on historic properties.

DATES: The exemption goes into effect on October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Jaime Loichinger, (202) 517-0219, jloichinger@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108 (section 106 and NHPA), requires federal agencies to consider the effects of projects they carry out, license/permit/approve,

or assist (undertakings) on historic properties, and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. Historic properties are those properties that are listed in the National Register of Historic Places (National Register) or eligible for such listing.

The NHPA authorizes the ACHP to promulgate regulations for exempting undertakings from any or all of the requirements of section 106. 54 U.S.C. 304108(c). The section 106 regulations, found at 36 CFR part 800, detail the process for the approval of such exemptions at 36 CFR 800.14(c).

In accordance with section 800.14(c), the ACHP may approve an exemption for an undertaking if it finds that: (i) the actions within the program or category would otherwise qualify as "undertakings" as defined in 36 CFR 800.16; (ii) the potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and (iii) exemption of the program or category is consistent with the purposes of the NHPA.

I. Background

In 2021, two Executive Orders (E.O.) were issued to accelerate investment in sustainable procurement strategies, focused on clean energy and infrastructure: 1) E.O. 14008, Tackling the Climate Crisis at Home and Abroad,

prioritizes the development of a Federal Clean Electricity and Vehicle Procurement Strategy and directs Federal agencies to upgrade the entire federal fleet to clean and zero-emission vehicles (ZEV); and 2) E.O. 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, sets a goal of 100 percent ZEV federal acquisitions by 2035, including 100 percent light duty vehicle federal acquisitions by 2027.

Additionally, the Infrastructure Investment and Jobs Act (IIJA) of 2021 (Public Law 117-58) appropriates \$550 billion for new infrastructure investments related to electric vehicles (EV), which are ZEVs. The IIJA includes provisions to increase investment in electric vehicle supply equipment (EVSE), alternative fuel infrastructure, EV batteries, electricity grid upgrades, and light-, medium-, and heavy-duty ZEVs and vessels. Several federal grant programs were established or received additional funding through the IIJA. The National Electric Vehicle Infrastructure (NEVI) program provides formula funding to states to install EVSE, while the Charging and Fueling Infrastructure Grant Program will provide grants on a competitive basis, with priority given to projects that expand access to EVSE within rural areas and low- and moderate-income neighborhoods. In total, the IIJA provides up to \$7.5 billion to build out a national network of EV chargers in the United States, including on Tribal lands.

Due to these requirements and investments, federal agencies are anticipated to propose activities to carry out, license, approve, or fund undertakings to electrify federal vehicles and provide EVSE that have the potential to affect historic properties and therefore, require section 106 review.

An EV produces zero tailpipe emissions when running only on electricity, dramatically lowering smog and greenhouse gas emissions even when considering electricity generation (EV refers to both Battery Electric Vehicles and Plug-in Hybrid Electric Vehicles). In order to charge EVs, installation of EVSE is required. EVs have the potential to significantly improve federal fleet efficiency by reducing vehicle operation and maintenance costs. EVs require EVSE. Commonly referred to as charging stations, EVSE is the hardware that supplies electricity to charge an EV. There are three levels of EVSE that are defined by their charging capacities; EVSE can be wall- or pole-mounted, co-located or stand alone, and vary in design, size, charging speed and energy use.

II. Exemption Concept and Criteria

In considering how to address the anticipated increase in undertakings as a result of these requirements and investments, the Department of Homeland Security (DHS) assembled an ad hoc working group of Federal Preservation Officers (FPOs) to discuss EV priorities and the potential

effects of expanded EVSE infrastructure programs on historic properties. Through consultation with fleet technical experts, the working group defined the undertakings to be addressed by the proposed exemption as the installation, maintenance, repair, and expansion of Levels 1, 2, and 3 EVSE as defined by the General Services Administration (GSA). After being approached by DHS with the concept of a program alternative, the ACHP determined it would propose the exempted category itself. The government-wide priority for fleet electrification and EVSE installation merited ACHP coordination of the proposal to ensure broad and appropriate consultation for an exemption likely to be applied across multiple federal agency programs.

The exemption can be used by "federal agencies." It is also available to be used by a state, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with a federal statute. Consistent with 36 CFR 800.14(c)(1), section 106 exemptions must meet the criteria mentioned earlier. The ACHP has determined that the proposed exemption, which appears below, meets these criteria. The exemption aligns with the requirements of the NHPA because it reflects an effort to harmonize modernization and climate change reduction measures with the continued protection and enjoyment of historic

properties. As described above and in the exemption text, the EVSE will be restricted to existing footprints and levels of previous ground disturbance, and would use reversible, non-permanent techniques for installation, where appropriate. As such, the effects of the proposed undertakings are foreseeable and likely to be minimal or not adverse.

III. Public Participation and Consultation

In accordance with 36 CFR 800.14(c)(2), public participation regarding exemptions must be arranged on a level appropriate to the subject and scope of the exemption. In order to meet this requirement, an earlier draft was published for public comment in the *Federal Register* on May 5, 2022 (87 FR 26771 - 26773). The ACHP worked closely with multiple federal agencies to ensure the exemption has the correct technical language, and also consulted with State Historic Preservation Officers, Tribal leaders, Tribal Historic Preservation Officers, and other consulting parties, including the National Trust for Historic Preservation and the National Alliance of Preservation Commissions.

Seven consultation meetings were held between June and August 2022, and had participants from 31 states, 21 Tribes, and 3 organizations. Comments and questions were submitted during consultation meetings, as well as via email during comment periods that followed the consultation

meetings. Most comments were supportive of the effort, although two organizations opposed the exemption in its entirety.

Comments reflected a range of areas, including: the scope of the exemption; the need for additional details, definitions and conditions to ensure effects to historic properties are not adverse; the use of professionals qualified within historic preservation field by agencies to meet the exemption's conditions; the potential cumulative effects to historic properties or post-review discoveries; and the potential for effects to properties of religious and cultural significance to Indian Tribes and Native Hawaiian organizations.

In response to these comments, the ACHP revised the exemption to more clearly define the range of actions that can occur using the exemption and added additional detail to the conditions under which an undertaking may fall within the scope of this exemption. Additional definitions, including changes to "parking facilities", were included in the version approved by the ACHP. Regarding the use of qualified professionals, the ACHP determined that such a requirement is not necessary because even if historic properties are present, they would not be affected due to the exemption's conditions. While the requirement was not included within the exemption, the conditions were further

refined to ensure that non-historic preservation professionals could reasonably apply the exemption's terms.

The ACHP received comments regarding the potential for the installation of EVSE, particularly when several EVSE might be installed within one location, to result in cumulative effects to historic properties, or for there to be discoveries of historic properties during project implementation. As written, because the exemption requires the use of existing electrical infrastructure, the amount of new EVSE that could be constructed or implemented at a given location is necessarily limited to the current electrical capacity. Therefore, it is unlikely to result in cumulative adverse effects on historic properties. Further, any addition beyond the existing electrical capacity would fall outside the exemption and require section 106 review. Other comments requested that there be a survey requirement. Because the exemption relies upon existing infrastructure and parking structures, any ground disturbance necessary to install the equipment will be limited to areas already disturbed, meaning that a survey would not likely result in the identification of historic properties that have sufficient integrity to contribute to or be individually considered eligible for listing in the National Register of Historic Places. Similarly, because the exemption limits the level of ground disturbance to previously disturbed sediments, it is unlikely that

discoveries of intact historic properties that retained integrity would occur. Moreover, the requirements of the Native American Graves Protection and Repatriation Act and other federal, state and local laws (besides section 106) are unaffected by the exemption. No additional edits were made to the exemption as a result of these comments.

Comments were received regarding potential effects from EVSE to historic properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations (NHOs), and how agencies would determine whether the installation of EVSE in a location may affect such properties without consultation with the affected Indian Tribe or NHO. While it is possible that some EVSE locations may be placed on or near such properties, because the exemption requires that ground disturbance be limited to the depth of previous construction and that the EVSE be minimally visible, the ACHP believes the exemption will reasonably ensure that any effects from the proposed EVSE undertakings to historic properties will be minimal or not adverse. When planning EVSE projects, agencies are encouraged to discuss the projects with stakeholders, including Indian Tribes and NHOs, to ensure that application of the exemption is appropriate. This recommendation is further strengthened by the addition of a new stipulation within the exemption, "Recommendation Outside Tribal Lands."

Two objections were made to the exemption, on the basis that the proposal ran contrary to the purposes of the NHPA. However, one of the explicit policies of the NHPA is for the federal government to "use measures ... to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations." 54 USC 300101(1). Climate change presents various challenges to historic properties and to many social, economic and other needs that must be addressed. Given that this exemption supports expansion of the use of EVs across the country, a climate change reduction method, it clearly meets the purposes of the NHPA. The ACHP acknowledges the objections and will continue to oversee the exemption's use.

Finally, to ensure appropriate administrative oversight of the exemption, the ACHP added an amendment provision to the exemption. While there were requests to also include a reporting stipulation, such reporting was determined by the ACHP to be unnecessary due to the minimal or non-adverse effects to historic properties. Further, such information would be challenging to require and obtain from the myriad agencies that will be using this exemption. However, the ACHP has committed to routinely querying agencies regarding the use of the exemption and will share that information with consulting parties when appropriate.

On October 26, 2022, the ACHP membership approved the exemption reproduced below.

IV. Text of Exemption

The full text of the approved exemption is reproduced below:

Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment

I. Exemption from Section 106 Requirements

Except as noted in Section II, all federal agencies are exempt from the Section 106 requirements of taking into account the effects of the installation, maintenance, repair, or expansion of EVSE and Level 1, 2, or 3 charging stations, provided these:

- (1) take place in existing parking facilities with no major electrical infrastructure modifications and are located as close to an existing electrical service panel as practicable;
- (2) use reversible, minimally invasive, non-permanent techniques to affix the infrastructure;
- (3) minimize ground disturbance to the maximum extent possible, and ensure that it does not exceed previous levels of documented ground disturbance;

- (4) use the lowest profile EVSE reasonably available that provides the necessary charging capacity;
- (5) place the EVSE in a minimally visibly intrusive area; and
- (6) use colors complementary to surrounding environment, where possible.

Each federal agency remains responsible for considering the effects of components of its undertakings not subject to this exemption on historic properties, in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative pursuant to 36 CFR 800.14.

II. Application on Tribal Lands

This exemption shall not apply on Tribal Lands, or to activities that may affect historic properties located on Tribal Lands, unless the Tribal Historic Preservation Officer, Tribe, or a designated representative of the Tribe has provided prior written notification to the Advisory Council on Historic Preservation (ACHP) that it agrees with the use of the exemption on its lands. Indian Tribes can agree to such use of the exemption by completing the attached form (Attachment A) and submitting the completed form to the ACHP. The exemption would then be applicable on those Tribal Lands when the ACHP provides notice on its website of such agreement.

III. Recommendation Outside Tribal Lands

While the ACHP does not expect that activities carried out consistent with this exemption will affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations (NHOs), the ACHP notes that such historic properties have not been consistently identified during prior documentation efforts. The ACHP advises that, where the installation of EVSE may occur in a location on or near an existing archaeological site, feature, or district, or any other property with known potential significance to Indian Tribes or NHOs, the agency should coordinate with interested Indian Tribes or NHOs to determine whether they ascribe significance to the site or property. Should a Tribe or Native Hawaiian organization ascribe significance to the site area, the agency should undertake a Section 106 review in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative pursuant to 36 CFR 800.14.

IV. Existing Agreements and State and Local Reviews

This exemption does not amend, invalidate, or otherwise modify Section 106 agreements in existence at the time this exemption goes into effect. This exemption does not modify, preempt, or replace any applicable state or local laws or regulations.

V. Termination

The ACHP may terminate this exemption in accordance with 36 CFR 800.14(c)(7) if it determines that the purposes of Section 106 are not adequately met.

VI. Amendments

This exemption may be amended by the ACHP membership. Such amendments must be consistent with the criteria at 36 CFR 800.14(c)(1) and preceded by consultation appropriate to the scope of the amendments.

VII. Definitions

The following definitions shall apply to this exemption:

- a. "Agency" means an agency as defined by 5 U.S.C. 551, and includes state, local, or tribal government officials who have been delegated legal responsibility for compliance with Section 106 in accordance with federal law.
- b. "Electric Vehicle Supply Equipment" (EVSE) means conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of delivering energy from the premises wiring to the EV. There are three levels of EVSE:
 - i. Level 1 - Refers to a freestanding or wall mounted charging structure that delivers a

110/120V charge, replenishing an EV battery at a rate of 4 to 6 miles of range per hour of charging time. Charging an EV at level 1 typically takes between 7 and 20 hours depending on the size of the vehicle's battery.

ii. Level 2 - Refers to a freestanding or wall mounted charging structure that delivers a 208/240V charge, replenishing an EV battery at a rate of 10 to 20 miles of range per hour of charging time. Charging an EV at level 2 typically takes between 2 and 5 hours depending on the size of the vehicle's battery.

iii. Level 3 (also known as Direct Current (DC) Fast Charging) -Refers to a freestanding or wall mounted structure capable of being networked that is designed to charge vehicles more quickly than level I or level II with an electrical output ranging between 40 kW - 500 kW delivering 50 - 1000 volts of direct current to the EV battery. Converts AC power to DC within the charging station and delivers DC power directly to the battery. DC fast charging can typically replenish an EV battery at a rate of 50 to 200 miles of range per 30 minutes of charging time.

- c. "Lowest profile equipment" means EVSE that is the smallest height and width possible that meets the EV charging needs.
- d. "Minimally visibly intrusive" means that the EVSE is partially visible but does not detract from the views from or to historic properties.
- e. "Parking facility" means any building, structure, land, right-of-way, facility or area used for parking of motor vehicles.
- f. "Tribal lands" means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

**ATTACHMENT A to the Exemption from Historic Preservation
Review for Electric Vehicle Supply Equipment**

The (INSERT NAME OF INDIAN TRIBE) authorizes federal agencies to utilize the attached Exemption from Historic Preservation Review for Electric Vehicle Supply Equipment on the Tribal Lands of the (INSERT NAME OF INDIAN TRIBE).

Signed by: (Signature)

(Printed Name and Title)

(DATE)

The (INSERT NAME OF INDIAN TRIBE) may discontinue this authorization at any time by providing written notice to the Advisory Council on Historic Preservation.

For further information, please contact:

_____ (Tribal Contact; Name and
Contact Information)

(END OF DOCUMENT)

Authority: 36 CFR 800.14(c).

Dated: October 28, 2022.

Javier Marques,

General Counsel.

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